

# **Institute of Museum and Library Services Policy Guidance**

## ***Title VI Prohibition Against National Origin Discrimination As It Affects Persons With Limited English Proficiency***

**Under Title VI of the Civil Rights Act of 1964, recipients of Federal financial assistance must take adequate steps to ensure that people with limited English proficiency (“LEP”) receive the language assistance necessary to afford them meaningful access to federally-assisted programs, activities, and services . This guidance explains the basic legal requirements of Title VI of the Civil Rights Act of 1964 (Title VI) and explains how recipients of federal financial assistance from the Institute of Museum and Library Services can ensure their compliance with the law.**

### **A. BACKGROUND**

#### **1. Institute of Museum and Library Services LEP Policies and Principles**

Federally funded programs should not only provide services to the populations that they currently reach but should also try to reach un-served and under-served populations, including persons with limited English proficiency. Enhancing America’s museums and libraries is core to the IMLS’s mission, and we support our award recipients’ efforts to reach people from many different cultures and language backgrounds. Part of the way the IMLS provides support to our recipients is by funding programs that increase access by non-English speakers to library and museum services, materials, and facilities. The agency also funds programs in languages other than English.

Museums and libraries have a long history of interacting with people with varying language backgrounds and capabilities within the communities where they are located. Libraries are an integral part of the community they serve and traditionally provide access to books, computer software, and other resources and materials in multiple languages. Museums of all sizes frequently have multi-lingual exhibit labels or signs to assist visitors who speak different languages, and larger ones often have brochures, tours, and courses in multiple languages. The agency’s goal is to continue to encourage these efforts and share practices so that other museums and libraries can benefit from other institutions’ experiences.

On August 11, 2000, the President issued Executive Order 13166, titled “Improving Access to Services by Persons With Limited English Proficiency .” 65 FR 50121 (August 16, 2000). On the same day, the Assistant Attorney General for Civil Rights issued a Policy Guidance Document, titled “Enforcement of Title VI of the Civil Rights Act of 1964 – National Origin Discrimination Against Persons With Limited English Proficiency” (hereinafter referred to as “DOJ LEP Guidance”), reprinted at 65 FR 50123 (August 16, 2000). Both the Executive Order and the DOJ LEP Guidance direct federal grant agencies to issue written

guidance to recipients clarifying existing legal obligations under Title VI to ensure meaningful access to federally assisted programs and activities by persons with limited English proficiency (LEP).

Under Title VI and the DOJ LEP Guidance, IMLS award recipients have enormous flexibility in addressing the needs of their constituents with limited English skills. By balancing the factors discussed more fully in Section B -- the number or proportion of people with limited English skills served, the frequency of their contact with the program, the importance and nature of the program, and the resources available -- IMLS awardees' Title VI obligations in many cases will be satisfied by making available oral language assistance or commissioning translations on an as-requested and as-needed basis. There are many circumstances where, after an application and balancing of the four factors noted above, Title VI would not require translation. **For example, Title VI does not require a library to translate its collections, but it does require the implementation of appropriate language assistance measures to permit an otherwise eligible LEP person to apply for a library card.** The IMLS views this policy guidance as providing sufficient flexibility to allow the IMLS to continue to fund language-dependent programs in both English and other languages without requiring translation that would be inconsistent with the nature of the program.

The IMLS handles any discrimination complaints it receives on a case by case basis, by fact-intensive inquiry into the actual effects of the recipient's actions and any omissions toward persons with limited English proficiency. Where a failure to reasonably address the language needs of LEP individuals is found to result in discrimination on the basis of national origin, the IMLS requires award recipients to develop and/or implement appropriate corrective language assistance measures. Accordingly, all recipients should examine their policies and practices in making information and services available to the public to determine whether they adversely affect the ability of LEP persons to access information or obtain services in a meaningfully equal manner. This policy guidance provides a legal framework to assist recipients in conducting such assessments and in developing appropriate and reasonable language assistance measures designed to address the needs of LEP individuals. The IMLS simultaneously and continuously assesses the accessibility of its own programs and operations to LEP populations.

## **2. Legal Rights of Persons With Limited English Proficiency**

English is the predominant language of the United States. According to the 1990 Census, English is spoken by 95% of U.S. residents. Of those U.S. residents who speak languages other than English at home, the 1990 Census reported that 57% of people above the age of four speak English "well to very well."

The United States is also, however, home to millions of individuals who are "limited English proficient" (LEP): they cannot speak, read, write or understand the English language at a level that permits them to function effectively in English-only environments. Because of this inability to speak or understand

English, LEP persons are often excluded from programs, experience delays or denials of services, or receive care and services based on inaccurate or incomplete information.

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et. seq., states: "No person in the United States shall on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Under Title VI and the IMLS's Title VI regulations, a recipient of federal financial assistance may not, on the basis of race, color, or national origin:

- Deny an individual the right to participate in federally assisted programs;
- Provide services, financial aid, or other benefits that are different, or provide them in a different manner;
- Restrict an individual's enjoyment of an advantage or privilege enjoyed by others; or
- Defeat or substantially impair the objectives of federally assisted programs.

The Title VI statute, regulations, and case law all prohibit intentional discrimination on the basis of, among other grounds, national origin. In addition, the regulations of most federal agencies implementing Title VI (including those of IMLS) prohibit the adoption and application of policies and practices by recipients that appear neutral on their face but have a discriminatory effect. Thus, **discrimination does not have to be intentional to be in violation of Title VI.**

## **B. POLICY GUIDANCE**

### ***1. Who is Covered***

All entities that receive Federal financial assistance from the IMLS, either directly or indirectly, through a grant, cooperative agreement, contract or subcontract, are covered by this policy guidance. Title VI applies to all Federal financial assistance, which includes but is not limited to awards and loans of Federal funds, awards or donations of Federal property, details of Federal personnel, or any agreement, arrangement or other contract that has as one of its purposes the provision of assistance.

Title VI prohibits discrimination in any program or activity that receives Federal financial assistance. In most cases, when a recipient receives Federal financial assistance for a particular program or activity, all operations of the recipient are covered by Title VI, not just the part of the program that uses the Federal assistance. Thus, all parts of the recipient's operations would be covered by Title VI, even if the Federal assistance were used only by one part.

## ***2. Basic Requirement: All Recipients Must Take Reasonable Steps To Provide Meaningful Access to LEP Persons***

Recipients who fail to provide services to LEP constituents in their federally assisted programs and activities may be discriminating on the basis of national origin in violation of Title VI and its implementing regulations. Title VI and its implementing regulations require, together with Executive Order 13166 and the accompanying DOJ LEP Guidance, that recipients take reasonable steps to ensure meaningful access to the information, programs, and services they provide.

There is no "one size fits all" solution for Title VI compliance with respect to LEP persons, and recipients of federal assistance have considerable flexibility in determining precisely how to fulfill this obligation.

At the outset, it is important to emphasize that museums and libraries are in the business of maintaining, sharing and disseminating vast amounts of information and items, most of which are created or generated by third parties. In large measure, the common service provided by IMLS recipients is access to information, whether maintained on-site or elsewhere, not the generation of the source information itself. This distinction is critical in properly applying the four-factor analysis, discussed below, to libraries and museums.

For example, in the context of library services, acquisition of written source materials in languages other than English would likely have a direct and positive impact on increasing interest in accessing library services by LEP persons. However, because the nature of a library's collection does not directly impact its accessibility, acquiring or translating books, audio tapes, and other source materials into other languages is not required under the four-factor analysis discussed below. For the purposes of ensuring meaningful access, recipients should focus their attention on activities or processes that directly impact access such as applications for library or membership cards, dissemination of information on where and how source material is maintained and indexed, and the provision of library-generated research services to the general public. A similar distinction and analysis should be employed with respect to a museum's acquisition of items of diverse cultural significance versus its procedures for making those items accessible to LEP populations.

What constitute reasonable steps to ensure meaningful access in the context of federally-assisted programs and activities in the area of museums and library services will be contingent upon a balancing of four factors:

- (1) the number and proportion of eligible LEP constituents;
- (2) the frequency of LEP individuals' contact with the program;
- (3) the nature and importance of the program; and
- (4) the resources available.

Even those award recipients who serve very few LEP persons on an infrequent basis should use a balancing analysis to determine whether the importance of the service(s) provided and minimal costs make language assistance measures reasonable even in the case of limited and infrequent interactions with LEP persons. This plan need not be intricate; it may be as simple as being prepared to use a commercially available “language line” to obtain immediate interpreting services or having bilingual staff members available who are fluent in the most common non-English languages spoken in the area.

### ***(1) Number or Proportion of LEP Individuals***

The appropriateness of any action will depend on the size of the LEP population that the recipient serves and the prevalence of particular languages. Programs that serve a few or even one LEP person are still subject to the Title VI obligation to take reasonable steps to provide meaningful opportunities for access. The first factor in determining the reasonableness of a recipient's efforts is the number or proportion of people who will be excluded from the benefits or services if efforts are not made to remove language barriers. The steps that are reasonable for a recipient who serves one LEP person a year may be different than those expected from a recipient that serves several LEP persons each day.

### ***(2) Frequency of Contact with the Program***

Frequency of contacts between the program or activity and LEP individuals is another factor to be weighed. If LEP individuals must access the recipient's program or activity on a daily basis, e.g., as they must in attending elementary or secondary school, a recipient has greater duties than if such contact is unpredictable or infrequent. Recipients should take into account local or regional conditions when determining frequency of contact with the program, and should have the flexibility to tailor their services to those needs.

### ***(3) Nature and Importance of the Program***

The importance of the recipient's program to beneficiaries will affect the determination of what reasonable steps are required. More affirmative steps must be taken in programs where the denial or delay of access may have life or death implications than in programs that are not as crucial to one's day-to-day existence. For example, the obligations of a federally assisted school or hospital differ from those of a federally assisted museum or library. This factor implies that the obligation to provide translation services will be highest in programs providing education, job training, medical/health services, social welfare services, and similar services. As a general matter, it is unlikely that museums and libraries receiving assistance from the IMLS will provide services having a similar immediate and direct impact on a person's life or livelihood. Thus, in large measure, it is the first factor (number or proportion of LEP individuals) that will have the greatest impact in determining the initial need for language assistance services.

In assessing the effect on individuals of failure to provide language services,

recipients must consider the importance of the benefit to individuals both immediately and in the long-term.

Another aspect of this factor is the nature of the program itself. Some museum content may be extremely accessible regardless of language. In these instances, little translation might be required.

#### ***(4) Resources Available***

The IMLS is well aware that our awardees may experience difficulties with resource allocation. Many of the organizations and awards involved are quite small. The resources available to a recipient of federal assistance may have an impact on the nature of the steps that recipient must take to ensure meaningful access. For example, a small recipient with limited resources may not have to take the same steps as a larger recipient to provide LEP assistance in programs that have a limited number of eligible LEP individuals, where contact is infrequent, where the total cost of providing language services is relatively high, and/or where the program is not crucial to an individual's day-to-day existence.

Translation and interpretation costs are appropriately included in award budget requests.

### **C. SUGGESTED STRATEGIES**

The key to ensuring meaningful access for people with limited English skills is effective communication. A library or museum can ensure effective communication by developing and implementing a comprehensive language assistance program that includes policies and procedures for identifying and assessing the language needs of its LEP constituents. Such a program should also provide for a range of oral language assistance options, notice to LEP persons of the right to language assistance, periodic training of staff, monitoring of the program and, in certain circumstances, the translation of written materials.

Several steps are important in establishing an effective LEP access program:

1. *Assessment* - The recipient/covered entity monitors, based on the four-factor or a substantially identical analytical framework, the language needs of the population to be served;
2. *Development of Comprehensive Written Policy on Language Access* - The recipient /covered entity develops and implements a comprehensive written policy that will ensure meaningful communication ;
3. *Training of Staff/Notice to Beneficiaries* - The recipient/covered entity takes steps to ensure that its staff understands the policy and is capable of carrying it out, and that LEP persons are aware of the existence of language assistance programs and the procedures for accessing those programs; and

4. *Vigilant Monitoring* - The recipient/covered entity conducts regular oversight of the language assistance program to ensure that LEP persons have meaningful access to the program.

The following are examples of language assistance strategies that are potentially useful for all recipients. These strategies incorporate a variety of options and methods for providing meaningful access to LEP beneficiaries and provide examples of how recipients should take each of the four factors discussed above into account when developing an LEP strategy. Not every option is necessary or appropriate for every recipient with respect to all of its programs and activities. Recipients should exercise the flexibility afforded under this Guidance to select those language assistance measures which have the greatest potential to address, at appropriate levels and in reasonable manners, the specific language needs of the LEP populations they serve. These examples are not intended to suggest that if services to LEP populations aren't legally required under Title VI, they should not be undertaken. Part of the way in which libraries and museums build communities is by cutting across barriers like language. A small investment in outreach to a linguistically diverse community may well result in a rich cultural exchange that benefits not only the LEP population, but also the library or museum and the community as a whole.

- Identification of the languages that are likely to be encountered, including an estimate of the number of LEP persons that are likely to be affected by its program. This information may be gathered through review of census and constituent data as well as data from school systems and community agencies and organizations;
- Posting signs in public areas in several languages, informing the public of their right to free interpreter services and inviting them to identify themselves as persons needing language assistance;
- Use of "I speak" cards for public-contact personnel so that the public can easily identify their primary languages;
- Employment of staff, bilingual in appropriate languages, in public contact positions;
- Contracts with interpreting services that can provide competent interpreters in a wide variety of languages in a timely manner;
- Formal arrangements with community groups for competent and timely interpreter services by community volunteers;
- An arrangement with a telephone language interpreter line for on-demand service;
- Translations of application forms, instructional, informational and other key documents into appropriate non-English languages and provide oral interpreter assistance with documents for those persons whose language does not exist in written form;
- Procedures for effective telephone communication between staff and LEP persons, including instructions for English-speaking employees to obtain assistance from bilingual staff or interpreters when initiating or receiving calls to or from LEP persons;

- Notice to and training of all staff, particularly public contact staff, with respect to the recipient's Title VI obligation to provide language assistance to LEP persons, and on the language assistance policies and the procedures to be followed in securing such assistance in a timely manner;
- Insertion of notices, in appropriate languages, about access to free interpreters and other language assistance, in brochures, pamphlets, manuals, and other materials disseminated to the public and to staff;
- Notice to and consultation with community organizations that represent LEP language groups, regarding problems and solutions, including standards and procedures for using their members as interpreters;
- Each recipient should, based on its own volume and frequency of contact with LEP clients and its own available resources, adopt of a procedure for the resolution of complaints regarding the provision of language assistance and for notifying the public of their right to and how to file a complaint under Title VI with the IMLS;
- State recipients, who will frequently serve large numbers of LEP individuals, may consider appointing a senior level employee to coordinate the language assistance program and to ensure that there is regular monitoring of the program.

#### **D. COMPLIANCE AND ENFORCEMENT**

The recommendations outlined above are not intended to be exhaustive. Recipients have considerable flexibility in determining how to comply with their legal obligation in the LEP setting and are not required to use all of the suggested methods and options listed. However, recipients must establish and implement policies and procedures for providing language assistance sufficient to fulfill their Title VI responsibilities and provide LEP persons with meaningful access to services.

Executive Order 13166 requires that each federal department or agency extending federal financial assistance subject to Title VI issue separate Guidance implementing uniform Title VI compliance standards with respect to LEP persons. Where recipients of federal financial assistance from IMLS also receive assistance from one or more other federal departments or agencies, there is no obligation to conduct and document separate but identical analyses and language assistance plans for IMLS. Recipients may rely upon and IMLS, in discharging its compliance and enforcement obligations under Title VI, will look to analyses performed and plans developed in response to similar detailed LEP guidance issued by other federal agencies.

The IMLS enforces Title VI as it applies to recipients' responsibilities to LEP persons through the procedures provided for in its Title VI regulations, which can be found in Part 1110 of Title 45 of the Code of Federal Regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance. IMLS coordinates with its State awardees in reviewing complaints arising from State-funded projects.



## **E. English-Only Provisions**

State and local laws may provide additional obligations to serve LEP individuals, but such laws cannot compel recipients of federal financial assistance to violate Title VI. For instance, given our constitutional structure, state or local “English-only” laws do not relieve an entity that receives federal funding from its responsibilities under federal anti-discrimination laws. Entities in states and localities with “English-only” laws are certainly not required to accept federal funding — but if they do, they have to comply with Title VI, including its prohibition against national origin discrimination by recipients of federal assistance. Failure to take reasonable steps to make federally assisted programs and activities accessible to individuals who are LEP will, in certain circumstances, violate Title VI.

### **IMLS’S TITLE VI COMPLIANCE PROCEDURES**

The Title VI regulations provide that the IMLS will investigate or (contact its State awardee to investigate, if appropriate) whenever it receives a complaint, report or other information that alleges or indicates possible noncompliance with Title VI. If the investigation results in a finding of compliance, IMLS will inform the recipient in writing of this determination, including the basis for the determination. If the investigation results in a finding of noncompliance, IMLS must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance, and must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, the IMLS will secure compliance through (a) the suspension or termination of Federal assistance after the recipient has been given an opportunity for an administrative hearing, (b) referral to the Department of Justice for injunctive relief or other enforcement proceedings, or (c) any other means authorized by federal, state, or local law.

Under the Title VI regulations, the IMLS has a legal obligation to seek voluntary compliance in resolving cases and cannot seek the termination of funds until it has engaged in voluntary compliance efforts and has determined that compliance cannot be secured voluntarily. IMLS will engage in voluntary compliance efforts and will provide technical assistance to recipients at all stages of its investigation. During these efforts to secure voluntary compliance, IMLS will propose reasonable timetables for achieving compliance and will consult with and assist recipients in exploring cost effective ways of coming into compliance.

In determining a recipient's compliance with Title VI, the IMLS's primary concern is to ensure that the recipient's policies and procedures overcome barriers resulting from language differences that would deny LEP persons a meaningful opportunity to participate in and access programs, services, and benefits. A recipient's appropriate use of the methods and options discussed in this policy guidance will be viewed by the IMLS as evidence of a recipient's willingness to comply voluntarily with its Title VI obligations. If implementation of one or more of these options would be so financially burdensome as to defeat the legitimate

objectives of a recipient/covered entity's program, or if there are equally effective alternatives for ensuring that LEP persons have meaningful access to programs and services (such as timely effective oral interpretation of vital documents), IMLS will not find the recipient/covered entity in noncompliance.

#### **E. TECHNICAL ASSISTANCE**

IMLS will assist its awardees in providing services to their LEP constituents by sharing information on potential community resources, by increasing awareness of emerging technologies, and by sharing information on how other recipients have addressed the language needs of diverse populations.

Even during its investigative process, IMLS will remain available to provide technical assistance to enable recipients to come into voluntary compliance with Title VI and its implementing regulations.

For further information, clarification, or assistance, please contact Nancy E. Weiss at 202-606-5414.